



**FILED ELECTRONICALLY**

February 1, 2008

Re: *Ex Parte* Presentations in MB Docket No. 07-198 and MB Docket No. 07-18.

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, The Broadband Service Providers Association (BSPA) submits this notice of an *ex parte* presentation in the above-captioned proceedings.

On January 30, 2008 Jack Day, SureWest; Tom Steel, RCN; Amy Mehlman, RCN; Martin Stern, K&L Gates; and I had a meeting on behalf of the Broadband Service Providers Association (BSPA) with Amy Blankenship, legal advisor to Commissioner Tate, to discuss the Commission's rulemaking on Program Access Rules and Examination of Programming Tying Arrangements.

At these meetings we discussed the policy recommendations made by the BSPA and its members as part of comments filed in MB docket No. 07-198. These topics included our recommendation that rather than immediately adopting regulations on tying and bundling, the FCC convene a special staff to study carriage issues and programming practices, including the tying and bundling of programming, requirements related to the placement of programming on a particular tier, and evolving industry structure. We also discussed our recommendations for FCC Arbitration and access to live sports programming. A copy of the meeting discussion points and a summary listing of economic studies filed in the proceeding are attached as reference.

Respectfully submitted for,  
**Broadband Service Providers Association**

By: /s/

<sup>1</sup> The current members of BSPA, all of which are last-mile, facilities-based providers, are: Everest Connections, Hiawatha Broadband, Knology, RCN, and SureWest Communications. BSPA is located at 1601 K Street NW, Washington, DC 20006. Phone: 202.661.3945

Ms. Marlene H. Dortch, Secretary  
July 25, 2007  
Page 2

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2 Enclosures  
cc: Amy Blankenship

Broadband Service Providers Association (BSPA)  
FCC Discussion Outline – January 30, 2008  
Proceeding 07-198

BSPA Attendees:

Jack Day, SureWest  
Tom Steel, RCN  
Amy Mehlman, RCN  
John Goodman, BSPA  
Martin Stern, K&L Gates

The BSPA has proposed several FCC actions in its filed comments in the 07-198 proceeding. In some instances these policy positions and proposals were unique to the BSPA comments. We would like to provide additional background on these proposals and determine any specific questions the FCC may have that should be addressed in our reply comments.

1. Proposal for Appointment of Special, Independent Staff to Conduct Study of Carriage in All-digital Networks.
  - a. The scope of current analysis has inherent limits or bias.
    - i. Current submitted economic analysis is all sponsored by the broadcast segment of the industry.
    - ii. None of the analysis centers on the new realities of all-digital networks.
    - iii. Significant amount tied to 2004 a-la-carte proceeding.
  - b. New carriage policies should be considered in the context of all-digital networks.
  - c. History of significant FCC studies.
  - d. Request that the FCC immediately open a proceeding to initiate the study with the goal of completion in 12 months using a special or separate staff.
  - e. Does the commission want further proposed details at this time?
2. Support for Arbitration-Type Procedure for the Remedies Phase of a Program Access Complaint Proceeding
  - a. We have proposed an initial draft of FCC procedures.
  - b. We support a last, best offer arbitration-type process conducted by Commission staff for the remedy phases over other approaches.
  - c. We see no legal barriers to such an approach as defined in our comments.

Ms. Marlene H. Dortch, Secretary  
July 25, 2007  
Page 4

3. Proposals for Live Sports Programming

- a. We assume that access to cable affiliated sports programming will be covered by closing the terrestrial loophole.
- b. All other live sports programming still has two major issues.
  - i. Assured access. (NFL Sunday Ticket)
  - ii. Restrictive carriage requirements. (NFL Network)
    - 1. Forced carriage limits other options.
    - 2. Major impact on cable pricing.
- c. BSPA Sports Policy Objectives
  - i. No live sports exclusives for any MVPD.
  - ii. The freedom to always offer live sports programming for standalone purchase.
  - iii. Implement new policy as part of DTV transition.
- d. Support for the proposed policies is very broad.
- e. FCC legal authority

**BSPA**  
**Tying and Bundling Comments**  
**Summary of Referenced Economic Studies**

1. Wholesale Packaging of Video Programming  
Date: January 4, 2008 (71 Pages)  
Authors: Bruce M. Owen  
Cited by: NBC, Viacom, FOX
2. Cable Networks: Bundling, Unbundling, and the Cost of Intervention  
Date: July 15, 2004 (59 Pages)  
Authors: Bruce M. Owen, John M. Cale, Economists Inc.  
Cited by: NBC, Viacom, Fox
3. The Impact of A La Carte Pricing on Multichannel Video  
Date: July 2004 (10 Page PowerPoint)  
Authors: Showtime Networks  
Cited by: Fox, Viacom
4. Why A Box of Crayons Has Many Colors, And The “Cable Tax” is not a Tax and Other Excerpts.  
Date: August 13, 2004 (8 Pages)  
Authors: Bruce M. Owen, John M. Cale, Economists Inc.  
Cited by: NBC, Fox, Viacom
5. The FCC “Further Report” on the Retail Marketing of Video Programming Services: An Economic Review  
Date: March 28, 2006 (31 Pages)  
Authors: Bruce M. Owen  
Cited by: Fox, Viacom
6. Benefits of Bundling and Costs of Unbundling Cable Networks  
Date: July 15, 2004 (35 Pages)  
Authors: Michael G. Bauman, Kent W. Mikkelsen, Economists Inc.  
Cited By: NBC, Fox, Viacom
7. Economic Implications of Bundling in the Market for Network Programming  
Date: January 4, 2008 (63 Pages plus attachments)  
Authors: Jeffery A. Eisenbach, Criterion Economics, L.L.C.  
Cited by: Disney